

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 Case No.: 2:19-cv-01370-JAD-DJA

4 Brandon Kellermeier,

5 Plaintiff

**Order Dismissing Action**

6 v.

7 State of Nevada,

8 Defendant  
9

10 Plaintiff Brandon Kellermeier submitted an application to proceed *in forma pauperis* in  
11 this case but did not submit a complaint.<sup>1</sup> On August 12, 2019, the magistrate judge denied his  
12 application to proceed *in forma pauperis* without prejudice because the application was  
13 incomplete and gave him 30 days to file a fully completed application or pay the \$400 filing fee.<sup>2</sup>  
14 The magistrate judge also gave him 30 days to file a complaint.<sup>3</sup> The court expressly warned  
15 him that his failure to submit a complaint and file the completed application or pay the filing fee  
16 by that deadline would result in the dismissal of this case.<sup>4</sup> The deadline has passed, and  
17 Kellermeier has not filed anything in response to the order.

18 District courts have the inherent power to control their dockets and “[i]n the exercise of  
19 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>5</sup> A  
20 court may dismiss an action with prejudice based on a party’s failure to prosecute an action,  
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23 <sup>1</sup> ECF No. 1 (application to proceed *in forma pauperis*).

24 <sup>2</sup> ECF No. 2 (order).

25 <sup>3</sup> *Id.*

26 <sup>4</sup> *Id.*

27 <sup>5</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).  
28

1 failure to obey a court order, or failure to comply with local rules.<sup>6</sup> In determining whether to  
2 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with  
3 local rules, the court must consider several factors: (1) the public's interest in expeditious  
4 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
5 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
6 availability of less drastic alternatives.<sup>7</sup>

7 I find that the first two factors—the public's interest in expeditiously resolving the  
8 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.  
9 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury  
10 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
11 prosecuting an action.<sup>8</sup> The fourth factor is greatly outweighed by the factors in favor of  
12 dismissal, and a court's warning to a party that his failure to obey the court's order will result in  
13 dismissal satisfies the consideration-of-alternatives requirement.<sup>9</sup> Kellermeier was warned that  
14 his case would be dismissed if he failed to submit a complaint and file a fully completed  
15 application or pay the \$400 filing fee.<sup>10</sup> So, Kellermeier had adequate warning that his failure to  
16 submit a complaint and pay the fee or submit a completed application would result in this case's  
17 dismissal.

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19 <sup>6</sup> See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with  
20 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to  
21 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–  
22 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to  
23 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.  
24 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,  
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

25 <sup>7</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;  
26 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

27 <sup>8</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

28 <sup>9</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

<sup>10</sup> ECF No. 2 (order).

Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without prejudice based on Kellermeier's failure to submit a complaint and file a fully completed application or pay the \$400 filing fee in compliance with this Court's August 12, 2019, order; and

The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS CASE.

Dated: September 23, 2019

U.S. District Judge Jennifer A. Dorsey